



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

April 1, 1965

Honorable Ben Atwell, Chairman
Revenue and Taxation Committee
House of Representatives
Austin, Texas

Opinion No. C-411

Re: Constitutionality of
House Bill 315, 59th
Legislature, Regular
Session.

Dear Mr. Atwell:

You ask the opinion of the Attorney General as to whether House Bill 315, 59th Legislature, Regular Session, is constitutional.

This Bill imposes a new tax

" . . . upon the first sale,
distribution or use of motor
fuel in this State for pro-
ducing or generating power
for the operation or propul-
sion of vessels on the water-
ways of this State, an excise
tax of five cents (5¢) per
gallon, or fractional part
thereof so sold, distributed
or used in this State"

The tax is collected by each "distributor"¹ who makes a first sale, distribution or use of motor fuel in this State as provided in Article 9.30 of this Bill. The tax is reported and paid to the State by such distributor in the same manner in which he reports and pays the present motor fuel tax imposed by Chapter 9 of said Title 122A.

^{1/} Distributor is defined in Article 9.01(4) of the present motor fuel tax laws, same being Article 9.01(4) of Title 122A, Taxation-General, of our Revised Civil Statutes.

This type of excise tax has been held constitutional.
State v. City of El Paso, 143 S.W.2d 366, 135 Tex. 359 (1940).
See also Texas Constitution, Article VIII, Section 17.


It is, therefore, our opinion that House Bill 315 is constitutional.

S U M M A R Y

House Bill No. 315 pending
before the 59th Legislature,
Regular Session, is constitutional.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 
W. E. Allen
Assistant

WEA/fb

APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone